

Remarks

Claims 11, 15 and 20 are amended. Claims 11 to 20 are pending in this application of which only claims 11 and 20 are in independent form.

Claims 11 and 20 were rejected under 35 USC 112, first paragraph, for the reasons set forth on pages 2 and 3 of the action.

Claims 11 and 20 are amended to delete the use of the terms "displacement" and "prevailing" as they do not appear in the original specification. The amendment clarifies the dependence of the method on the spring constant itself. Accordingly, claims 11 and 20 should now satisfy the requirements of the statute and comply with the enabling requirement.

Claims 11 and 18 to 20 were rejected under 35 USC 102(b) as being unpatentable over Kato et al. The following will show that independent claims 11 and 20 patentably distinguish the applicants' invention over this reference.

The pedal position measuring means 13 of Kato et al comprises an angular position measuring capability for measuring continuous operational angular positions of the accelerator pedal 2. In addition, the pedal position measuring means 13 also has a pedal pressing force measuring capability for measuring the pedal pressing force applied to the accelerator pedal 2 (please refer to {0047}).

FIG. 2 of Kato et al illustrates how the kick-down position of the accelerator pedal 2 is determined. Therefore, a so-called

reference position B has to be located and, starting from the position B, the kick-down position is determined by a predetermined angular distance with the aid of the angular position measuring capability of the pedal position measuring means 13.

The reference position B is determined by measuring the pedal pressing force applied to the accelerator pedal 2. The pressing force applied to the accelerator pedal 2 is compared to a predetermined threshold value, here 5.0 kgf. This is also illustrated in FIG. 2 on the bottom where the pedal pressing force is plotted as a function of the pedal position. The reference position B is reached under a specific pedal pressing force; here the value of 5.0 kgf is shown. The method of Kato et al therefore uses the absolute value of the pedal pressing force to detect an operator-controlled function.

In contrast to Kato et al, applicants' amended claim 11 incorporates the feature and limitation of:

"determining a quantity which characterizes the spring constant at the actual degree of actuation of said operator-controlled element;" (emphasis added)

The above clearly shows that the spring constant is proportional to the gradient of the pedal pressing force as a function of the pedal position. Such a gradient is nowhere discussed in Kato et al for detecting the operator-controlled function. In addition, Kato et al just determines an absolute value for the pedal pressing force so that no information is obtained with regard to the underlying spring constant. The absolute value for the pedal pressure at the reference position B

or elsewhere could be obtained by different combinations of spring constants such that an unambiguous association between the measured pedal pressure force and a spring constant is not possible in the apparatus of Kato et al.

In view of the above, applicants submit that claim 11 should now patentably distinguish the applicants' invention over Kato et al and be allowable. Claim 20 is amended herein so that it is co-extensive with claim 11 in an apparatus context. The remaining claims 12 to 19 are all dependent directly or indirectly from claim 11 so that they too should now be allowable.

Reconsideration of this application is earnestly solicited.

Respectfully submitted,



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